

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DEE ARLIN EASTER,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-05-0509-F
)	
LARRY DAMERON, ¹ R.C. DANIELS)	
and WADE LOWERY,)	
)	
Defendants.)	

ORDER

Plaintiff's objection to the Report and Recommendation of Magistrate Judge Valerie K. Couch is before the court. (Doc. no 59.) The objection was timely filed on July 5, 2006. Plaintiff objects to the magistrate judge's recommendation that defendant Wade Lowery's Motion to Quash Summons (doc. no. 53) be granted. Plaintiff appears *pro se*, and his pleadings are liberally construed.

As required by 28 U.S.C. § 636(b)(1), all objected to issues have been reviewed *de novo*. Plaintiff objects to the magistrate judge's recommendation that the motion to quash be deemed confessed, stating that "[t]he reason for plaintiff's failure to object or otherwise respond to Mr. Lowery's Motion to Quash Summons is due to the emergency illness of the law library supervisor...and the transfer[] of the...[l]aw clerk that was assisting in this case." (Objection, p. 1.) The objection also states that "[t]he law library is not adequately functioning" and states that "it does not have the legal materials or legal assistance realistically needed." (Objection, p. 2.)

¹This defendant identifies himself as "Lary Damron."

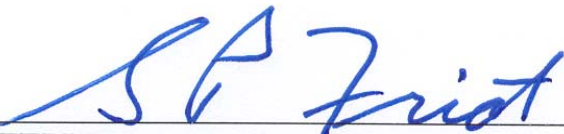
Plaintiff's objection does not explain how any of these matters would have prevented plaintiff from filing a timely objection to the motion to quash setting out any reasons which plaintiff might have had for the untimely service of Mr. Lowery. Even if the court were to modify the magistrate judge's ruling to the extent that the motion was deemed confessed and go on to reconsider the motion to quash on its merits, plaintiff has not offered an explanation as to why service on Mr. Lowery was untimely in the first place.

Therefore, after consideration of plaintiff's objections to the Report and Recommendation, the record, and the relevant legal authorities, the court finds and concludes that the Report and Recommendation should be affirmed and that Mr. Lowery's motion to quash should be granted as recommended.

Conclusion

The Report and Recommendation of Magistrate Judge Valerie K. Couch is hereby **ACCEPTED, ADOPTED, and AFFIRMED** in its entirety. Mr. Lowery's Motion to Quash Summons is **GRANTED** as confessed and on the merits. This action remains referred to the magistrate judge in accordance with the original referral order.

Dated this 10th day of July, 2006.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE